

UPS and its workers' compensation insurance carrier, Liberty Mutual Fire Insurance Company (referred to jointly as "UPS" hereafter), ask the Utah Labor Commission to review Administrative Law Judge Hann's award of benefits to M. H. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On August 27, 2001, Mr. H injured his right knee working for UPS. UPS accepted liability under the workers' compensation system and paid for Mr. H's initial surgery and associated disability compensation.

On May 25, 2004, Mr. H filed an application with the Commission for additional medical treatment of his knee injury. UPS responded by denying that Mr. H's current medical problems are related to his work accident.

On March 31, 2005, Judge Hann held an evidentiary hearing on Mr. H's claim. In a decision issued April 4, 2005, Judge Hann ruled that Mr. H's current medical problems are a continuation of his original work-related injury. Judge Hann therefore ordered UPS to pay for Mr. H's medical care.

On May 3, 2005, UPS filed a motion for Commission review of Judge Hann's decision. Specifically, UPS argues that the evidence establishes Mr. H's current need for medical treatment of his right knee is due to a non-work injury that occurred two years after his work-related accident at UPS. UPS also argues Judge Hann should have appointed a panel to consider the medical aspects of Mr. H's claim.

FINDINGS OF FACT

The Commission makes the following findings regarding the issues raised by UPS's motion for review. The Commission affirms and adopts Judge Hann's findings of fact to the extent they are consistent with these findings.

The circumstances surrounding Mr. H's initial accident and injury are not in dispute. While working for UPS on August 27, 2001, he tore the anterior cruciate ligament and meniscus in his right knee. He underwent repair surgery on October 3, 2001. Over the next several months, he slowly recovered from the injuries and surgery, but he experienced recurring pain and instability in the knee.

During June 2003, Mr. H experienced additional problems with his right knee. The facts surrounding the onset of these additional problems are in dispute. Based on the testimony and

medical record, Judge Hann found that Mr. H's right knee problems flared up as he was preparing to help his brother lift some furniture. Specifically, Judge Hann found that as Mr. H was squatting down, but before he had actually lifted anything, his right knee locked and he was unable to stand for several minutes.

UPS challenges Judge Hann's interpretation of the evidence by arguing that Mr. H had actually lifted some furniture before he experienced problems with his knee. In considering UPS's argument, the Commission has carefully reviewed Mr. H's testimony. Neither the questions nor the answers are models of clarity. But after considering Mr. H's testimony as a whole, the Commission agrees with Judge Hann that Mr. H's knee "locked up" as he was squatting down, before he had lifted anything.

After the squatting incident of June 2003, Mr. H sought additional medical evaluation of his continuing right knee problems. Additional diagnostic studies indicated "postoperative changes of ACL repair" and "meniscal degeneration and probable superimposed tear." Mr. H's surgeon stated that Mr. H "may not" have healed from his initial work-related injury, but that this failure to heal was "only partially responsible" for his ongoing right-knee problems. On the other hand, UPS's consulting physician opined that Mr. H's current problems are the result of a new injury that occurred as he attempted to help move furniture in June 2003. Thus, according to UPS's consulting physician, Mr. H suffered a new meniscal tear in June 2003 that was unrelated to his earlier work-related injury.

DISCUSSION AND CONCLUSION OF LAW

As previously noted, UPS has challenged some of Judge Hann's findings of fact and has argued that a panel should evaluate the medical aspects of Mr. H's claim. In the preceding section of this decision, the Commission has addressed UPS's factual arguments and has affirmed the facts stated in Judge Hann's decision. The Commission now turns to UPS's request for appointment of a medical panel.

Section 34A-2-601(1) of the Act authorizes ALJs to appoint panels to consider the medical aspects of contested workers' compensation claims. Pursuant to the Commission's Rule 602-2-2, a medical panel generally should be appointed where conflicting medical reports establish the existence of a significant medical issue, such as questions of medical causation.

The evidence regarding medical causation of Mr. H's current medical problems is muddled. Mr. H's surgeon has expressed a hesitant and ambiguous opinion that Mr. H's original work-related injury never completely healed and contributed to his current problems. On the other hand, UPS's consulting physician finds no connection between the work injury and the current problems. However, this opinion appears to be grounded on the incorrect belief that Mr. H had engaged in lifting furniture during June 2003, when in fact he had merely attempted to squat down, preparatory to beginning the lifting process.

While the parties' medical evidence is sufficient to raise substantial medical questions, the evidence is not sufficient to resolve those issues. The Commission therefore finds it appropriate to

remand this matter to the Adjudication Division with instructions to refer Mr. H's claim to a medical panel, and to take such other action as is deemed appropriate to complete the adjudication of Mr. H's claim.

ORDER

The Commission affirms Judge Hann's findings of fact to the extent consistent with the findings expressed in this decision. The Commission grants UPS's request that this matter be remanded for appointment of a medical panel. It is so ordered.

Dated this 12th day of October, 2005.

R. Lee Ellertson, Commissioner